

STATE OF MICHIGAN  
COURT OF APPEALS

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EZELLA GARTRELL O'CONNOR,

Plaintiff/Counterdefendant-Appellee,

v

PATRICK LLOYD O'CONNOR,

Defendant/Counterplaintiff-Appellant.

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UNPUBLISHED  
September 1, 2000

No. 211246  
Lapeer Circuit Court  
LC No. 96-022882-DM

Before: Holbrook, Jr., P.J., and Kelly and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of divorce that ended the parties' eighteen year marriage. We affirm.

Plaintiff and defendant were married in June 1979. They have two children who have now reached the age of majority. During the marriage, the parties acquired a substantial marital estate, which consisted, in part, of several business properties. Central to this appeal is the value of one of those business properties, Thermal Power Corporation.

Defendant first argues that the trial court erred in valuing Thermal Power. We disagree. In reviewing a trial court's division of a marital estate, we will not reverse a trial court's dispositional ruling unless we are convinced that the division was inequitable. *Quade v Quade*, 238 Mich App 222, 224; 604 NW2d 778 (1999); *Demman v Demman*, 195 Mich App 109, 114; 489 NW2d 161 (1992). We review a trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The valuation of an asset by the trial court is a finding of fact. *Kowalesky v Kowalesky*, 148 Mich App 151, 155; 384 NW2d 112 (1986). "[W]e will conclude that a ruling is clearly erroneous only if, after reviewing the entire record, we are left with the definite and firm conviction that a mistake has been committed." *Id.* "[W]here a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

Following our review of the record in its entirety, we are not convinced either that the valuation was erroneous, or that the dispositional ruling was inequitable. “The general rule applicable to valuation of marital assets is that the party seeking to include the interest in the marital estate bears the burden of proving a reasonably ascertainable value; if the burden is not met, the interest should not be considered an asset subject to distribution.” *Wiand v Wiand*, 178 Mich App 137, 149; 443 NW2d 464 (1989). The trial court’s role is to see that the parties receive a fair trial. The court is not “responsible for what is presented in evidence and what is not. Its role is that of factfinder, not fact provider.” *Perrin v Perrin*, 169 Mich App 18, 23; 425 NW2d 494 (1988).

The trial court based its valuation of Thermal Power on numerous exhibits offered by plaintiff. See *Wiand, supra* at 149. Also, as in *Wiand*, plaintiff’s efforts at discovery on the issue were hindered by defendant. *Id.* After reviewing the evidence, and giving deference to the trial court’s superior ability to assess witness credibility, MCR 2.613(C), we conclude that the trial court did not err in discounting defendant’s assertion that the business had little or no value, and valuing Thermal Power as it did.

Next, defendant argues that the trial judge should have disqualified himself after he admitted that he remembered that plaintiff had responded to a call for volunteers to assist with the judge’s judicial office campaign the year before. However, defendant has waived appellate review of this matter by failing to seek de novo review with the chief judge of the circuit court of the trial judge’s denial of the motion. MCR 2.003(C)(3)(a); *Welch v District Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996). In any event, because we are not convinced that the judge was biased, nor that appearances created a high probability of bias, we conclude that the trial court did not abuse its discretion in denying defendant’s motion for disqualification. *Michigan Ass’n of Police v Pontiac*, 177 Mich App 752, 758; 442 NW2d 773 (1989).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Jeffrey G. Collins